

N THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Kountz-Spire Rock LLC

NOTICE OF INTENT TO APPEAR: Kountz-Spire Rock LLC

CASE 41G-0556-R-2023
41G 95612-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 95612-00 was decreed as a commercial water right from a spring located in the Jefferson River Basin. It received a Department of Natural Resources (DNRC) issue remark concerning the Means of Diversion. Claimant Kountz-

Spire Rock LLC filed a Notice of Intent to Appear stating that the water right is used for stock watering.

2. The Claimant, Kountz-Spire Rock LLC, was ordered to file a statement with the court identifying the correct Means of Diversion and indicating when the Purpose of the water right changed from commercial use to stock use.

3. On May 8, 2023, John Kountz filed a response identifying the correct Means of Diversion and indicating when the Purpose of the water right changed to stock use. The response was accompanied by evidence to resolve the issue remarks on Claim 41G 95612-00.

4. Kountz indicates that his family has owned the property since the 1930s and that the Kountz family grazed the entire area with sheep and cattle. Kountz states that stock have been watered here for his entire life (over 70 years). The purpose of claim 41G 95612-00 should be corrected to Stock Use.

5. Claim 41G 95612-00 states that the Means of Diversion is a headgate. It received an issue remark stating:

THE CLAIMED MEANS OF DIVERSION APPEARS TO BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The April 15, 1982 Affidavit from B.J. Levengood references the use of the spring, reservoir, pipeline and water tank used on the property. Photos attached to Kountz' filing show the spring and spring box used on the property. The Means of Diversion should be corrected to Spring Box to resolve the issue remark and reflect how the claim has been historically diverted.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. Claimant has provided sufficient

evidence identifying the correct Means of Diversion and indicating when the Purpose of the water right changed to stock use.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The information provided by the claimant is sufficient to resolve the issue remark appearing on claim 41G 95612-00.

RECOMMENDATIONS

1. Claim 41G 95612-00 should be modified as provided above.
2. The issue remark should be removed from claim 41G 95612-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the issue remarks have been removed from the claim abstract.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Kountz-Spire Rock LLC
830 Point of Rocks Rd
Whitehall, MT 59759-9519
406-287-3849 H
48johnk@Gmail.Com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 95612-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: KOUNTZ-SPIRE ROCK LLC
830 POINT OF ROCKS RD
WHITEHALL, MT 59759 9519

Priority Date: FEBRUARY 25, 1909

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 30.00 GPM

Volume: 24.26 AC-FT

Source Name: SPRING, UNNAMED TRIBUTARY OF CEDAR GULCH

Source Type: GROUNDWATER
ALSO KNOWN AS CRYSTAL SPRING

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | NENWSW | 20 | 1N | 5W | JEFFERSON |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | NENWSW | 20 | 1N | 5W | JEFFERSON |